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No. 85-2131

In the Supreme Court of the United States

OCTOBER TERM, 1986

LEVY AUTO PARTS OF CANADA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that the court of appeals erred in reversing orders dismissing an indictment because of improper venue.

Subsequent to the arrest of one Saeed Zakaria, a co-conspirator, petitioners were charged in an indictment returned in the United States District Court for the Eastern District of Virginia on December 6, 1982, with conspiracy to violate the Arms Export Control Act, 22 U.S.C. 2751-2794, in violation of 18 U.S.C. 371. The object of the charged conspiracy was to procure the exportation of tank engines to Iran under export licenses falsely showing Pakistan as the ultimate destination of the engines. The indictment alleged 26 overt acts in furtherance of the conspiracy. Twenty-four of the overt acts were alleged to have been committed in other countries, but two of the overt acts referring to the transmission of price information were alleged to have been committed in the Western District of Michigan. Before trial, petitioners moved to dismiss the indictment on the ground that venue was proper only in Michigan, not in Virginia. The govern-

ment, in response, argued that venue was proper in the Eastern District of Virginia because one of the conspirators, Zakaria, had been arrested there. The government pointed out that under 18 U.S.C. 3238, venue for an offense committed outside the United States is proper in any district in which one of the offenders is arrested.

On December 7 and 28, 1984, the district court entered orders dismissing the indictment (Pet. App. A13-A14). It ruled that the allegations of overt acts in the indictment that occurred in the Western District of Michigan preempted venue in Virginia under 18 U.S.C. 3238. On April 10, 1986, the court of appeals reversed (Pet. App. A1-A12). It held that venue in the Eastern District of Virginia was proper under 18 U.S.C. 3238 because the alleged activity in Michigan was minimal, at most, and tangential to the main features of the offense.

Petitioners contend (Pet. 5-11) that both 18 U.S.C. 3238 and the Constitution preclude venue in a district solely on the basis that an offender was arrested there, when venue may be laid in another district in which the offense is alleged to have been committed. Whatever the merits of petitioners' contentions, they are not presently ripe for review by this Court.[1] The court of appeals' decision places petitioners in precisely the same position they would have occupied if the district court had denied their motion to dismiss. If petitioners are acquitted following a trial on the merits, their contentions will be moot. If, on the other hand, petitioners are convicted and their convictions are affirmed on appeal, they will then be able to present their contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking

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[1] It is now more than 42 months since the return of the indictment and more than 18 months since the district court's dismissal orders. Further interlocutory review at this time would cause additional delay in the final resolution of the charges against petitioners.

review of a final judgment against them. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

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[2] Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

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